**IN THE HIGH COURT OF JUDICATURE AT BOMBAY**
**CIVIL APPELLATE JURISDICTION**

**LETTER PATENT APPEAL NO.120 OF 1993**
**IN**
**WRIT PETITION NO.676 OF 1987**

Maharashtra General Kamgar Union
252, Janata Colony, Ram Narayan
Narkar Marg, Ghatkopar (East)
Bombay 400 077. ...Appellant

Vs.

1. M/s. RAPTAKAS BRATT & CO. LTD.
   47, Dr. Annie Besant Road
   Worli, Bombay 400 025.

2. S.D.Kadam
   Presiding Officer, Sixth Labour
   Court at Bombay, Arun Chambers,
   Tardeo, Bombay 400 034. ...Respondents

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Mr.N.M. Ganguli, Adv. for Appellant
Mr. P.K. Rele with Mr. Rajesh P. Rele with
Mr. Piyush Shah Advts. for Respondent No.1
Respondent No.2 is formal party.

**CORAM: H.L.GOKHALE &**
**SMT.R.S.DALVI,JJ.**
**DATED: 15TH SEPTEMBER, 2005**

**ORAL JUDGMENT (PER H.L.GOKHALE,J.)**

**1. Heard Mr. Ganguli in support of this Appeal. Mr. Rele appears for the Respondents. This Appeal seeks to challenge the order of the Single Judge dated 16th March 1992 in Writ Petition 676 of 1987 whereby the learned Single Judge had confirmed the order passed by the Sixth Labour Court at Mumbai in Reference (IDA) No.428 of 1983 between the Appellant Trade Union and the First Respondent Management.**

2. The dispute raised by the Appellant Trade Union was on behalf of the 9 workmen, to begin with which was with respect to their discontinuation from employment. A Reference was taken to the Labour Court under the Industrial Disputes Act seeking reinstatement with full backwages and continuity of service. The case of the workmen was that they had joined the Appellant Trade Union and therefore, they came to be terminated by orders of discharge simplicitor. This amounted to victimisation. It was their further case that they were in fact permanent workmen but were treated as casual workmen and that there is a breach of Section 25F and 25H of the Industrial Disputes Act. On as much as they have not been paid retrenchment compensation and that they have right to go back in the employment.

3. The claim of the workmen was contested by filing a written statement and by pointing out that all the workmen concerned were specifically classified as casual workmen. Separate Muster Rolls were maintained for the casual workmen on which these workmen used to sign. Their pay sheets were separate. They had not completed 240 days in any of the 3 years in which they worked prior to their discontinuation. Their services were not required and therefore, they were discontinued. The Company further contended that although it was not bound to pay retrenchment compensations, the Company still offered it to the

workmen.

4. Evidence was led in the Labour Court. The Management examined 3 witnesses. One was the Production Incharge from Worli Factory, wherein some of the workmen worked. The second was Incharge of Thane Factory and the third person examined was Commercial Manager. By the time the matter reached the Single Judge 3 out of these 9 workmen settled the dispute. Out of the remaining 6, 5 were from the Worli factory and one was from the Thane factory. The Management led evidence as to how the workmen had not completed 240 days in any of the 3 years to claim a permanent status.

5. The learned Labour Court Judge went through the evidence and came to the conclusion that as per the definition of the term Casual Workmen under the Clause 2(d) of the certified Standing Orders which applied to the Worli Factory and also Model Standing Orders which apply to the Thane Factory, it cannot be said that the workmen had to be treated as permanent workmen. The Judge however found that it appeared that they were made to work in place of other permanent workmen and it cannot be said that it was a work of essentially casual nature as per the Certified Standing Orders. He found that they were employed in view of absence of regular workmen as substitute workmen in the factory. He however came to the

conclusion that merely because they were engaged to work in place of the regular workmen one cannot jump to the conclusion that they have become permanent workmen. This is what he has observed in paragraph 8 of his Judgment and therefore, he finally rejected the Reference.

6. When the Petition was filed challenging this order, the learned Single Judge also noted that although the employees were called casual workmen it was a kind of hybrid definition as observed by him in paragraph 4 of his Judgment, but having noted that the work offered was only for certain days and throughout less than 240 days, the learned Judge held that the workmen cannot be said to have obtained the status of permanency. As far as the plea of victimisation is concerned, he noted that whereas the Union had entered in this Company in July 1982, the workmen were terminated in January 1982 and therefore, it cannot be said to be a victimisation. He also rejected the submission that it was a victimisation. The Petition was therefore dismissed.

7. Mr. Ganguli learned Counsel for the Appellant reiterated some of these submissions. He submitted that if the workmen were doing the work of permanent nature and if they were on breake they cannot be blamed for those breakes. He however, did not dispute that the workmen had in fact not completed 240 days as

shown in their Muster Rolls. His submission was that the period in between the breaks ought to be added in the service of the workmen and when it is counted this way the workmen would be seen as completing 240 days. It is not possible to accept this submission because it will mean that if work is taken from such substitutes, badlis or temporary or casual workmen in place of the regular workmen and if they are discontinued on the regular workmen reporting all such breakes will have to be read against the Management when in fact the regular workman would be working. That would run against provisions of Standing Orders which permit such classification into permanent, temporary, badlis and casual workmen. It may be some kind of hybrid situation as observed by the single Judge but still it cannot lead to permanent status for the workmen merely on that ground. No documents granting any permanency to any of the workmen were produced before Labour Court or Single Judge which is necessary as per the law.

8. In view of what is stated above there is no reason to interfere into the order of the learned Single Judge, Appeal is dismissed. No order as to costs.

(H.L.GOKHALE,J.)

**(SMT.R.S.DALVI,J.)**